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OFFICE OF PETITIONS

In re Application of :
Dale E. Redford et al. :
Application No. 10/815,491 : **DECISION ON PETITION**
Filed: April 1, 2004 :
Attorney Docket Number: 18525-0793 :
Title: METHOD FOR PRIVATE DISTRIBUTION :
OF PRINTED ADVERTISING MATERIAL :

This is a decision on the petition filed August 17, 2005, requesting that the above-identified application be accorded a filing date of April 1, 2004, with Figures 4 and 5 as part of the original disclosure of the application.

The application was deposited April 1, 2004. However, on June 17, 2005, the Office of Initial Patent Examination (OIPE) mailed a notice stating that the application had been accorded a filing date of April 1, 2004, and that the application appeared to have been deposited without Figures 4 and 5. The notice set a two-month period for response.

With the present petition, Petitioner has submitted a copy of Figures 4 and 5 along with the petition fee¹. Petitioner has indicated that set forth that the figures were submitted, and the "postcard accompanying the application has not been returned²."

¹ Petitioner has submitted \$130, when the petition fee due is \$400. The difference has been charged to his Deposit Account, as authorized in the petition.

² Petition, page 1.

THE RELEVANT SECTION OF THE MPEP

Section 503 of the MPEP, entitled Application Number and Filing Receipt, sets forth, in part:

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as prima facie evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.

Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as prima facie evidence of receipt of that item in the USPTO.

ANALYSIS

The PTO file is the official record of all papers filed in this application. It is noted that the electronic file contains 3 pages of drawings, consisting of Figures 1, 2, and 3. Figures 4 and 5 have not been located in the electronic file. Petitioner has asserted that these 2 figures were provided on filing, but his assertion is not more persuasive than the PTO file.

An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The PTO has a well established and well publicized practice of providing a receipt for papers filed in the PTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the PTO with a self-addressed postcard identifying the paper. A postcard receipt which *itemizes and properly identifies* the papers which are being filed serves as prima facie evidence of receipt

in the PTO of all the items listed thereon on the date stamped thereon by the PTO³.

Unfortunately, Petitioner does not have a stamped copy of a postcard receipt to provide as evidence that these two figures were received on filing. It is clear is that Figures 4 and 5 did not make their way into the electronic file, and without a properly stamped and itemized postcard, Petitioner is unable to establish that Figures 4 and 5 were included on filing.

CONCLUSION

For these reasons, the petition is **DISMISSED**.

The petition fee of \$400 will not be refunded, as this petition was not necessitated by any error on the part of the Office.

OIPE will process this application with a filing date of April 1, 2004, using only the application papers which were filed on that date. Figures 4 and 5 will not be entered.

If Petitioner desires for the Examiner to consider these pages which he cannot establish were submitted as part of the original disclosure, then he may submit them via an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter⁴.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

³ See MPEP 503.

⁴ See MPEP 608.02(h) and 608.04.